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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,061	09/04/2001	Edgar Franklin Hoy	BT-001APCT	9658

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EXAMINER

METZMAIER, DANIEL S

ART UNIT PAPER NUMBER

1712

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,061

Applicant(s)

HOY, EDGAR FRANKLIN

Examiner

Daniel S. Metzmaier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/15/03 & 1/13/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5,6,8-14,16-18,20 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5,6,8-14,16-18,20 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>122003</u> (10 pages) | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 5-6, 8-14, 16-18, 20 and 23 are pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 15, 2003 has been entered.

Information Disclosure Statement

2. Applicant's Information Disclosure as presented may be confusing to the printer. The examiner has crossed through the PTO-892s and PTO-1449s and cited the references on the 892 attached to this Action or said references were cited in an Action already of record. Said references have been considered.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the examiner is unable to find the basis in the specification for the claimed terminology for "calcination is carried out in the presence of greater than about 1,000 ppm of sodium". Applicants should provide where in the original specification said basis resides. To the extent applicant is relying on the inherent property of source materials for said basis, applicant should (1) provide evidence in the

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form of a data sheet and/or declaration evidence, and (2) amend the specification to set forth said limitation.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 5-6, 8-14, 16-18, 20 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 5 and 18 include two definitions for M' and M" in the claim, wherein first of said definitions is broader than the second and the second definition employs the language "selected from" to set forth an alternative grouping. Since the alternative grouping does not employ closed language, *i.e.*, "selected from the group consisting of", it is unclear whether said limitations are actual or merely preferred embodiments of the broader definitions set forth in the claims. It is therefore unclear what are the metes and bounds of the subject matter sought to be patented.

Claim 23 is further indefinite because it has been amended to depend on claim 18, directed to a dry rheology modification agent. Claim 23 (previously dependent on claim 21 directed to an aqueous composition) sets forth the composition of claim 18 is an elastic solid which exhibits stress dependent fluidity. To the extent that the dry rheology modification agent of claim 18 could have the properties set forth in claim 23. Applicant is required to provide basis in the original specification therefore and/or clarification of how the dry material exhibits stress-dependent fluidity.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Norman et al., 3,948,809. Norman et al (examples, claims, and column 2, line 25) discloses the calcination of bauxite waste liquors after addition of sodium carbonate or sodium hydroxide at temperatures of 400° C to 900° C. Said disclosure reads on the compositions and processes.

Response to Arguments

8. Applicant's arguments filed December 15, 2003 have been fully considered but they are not persuasive.

9. The claims set forth structures, which the instant specifications discloses may be obtained from calcining a bauxite waste stream. "The claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable." Please see MPEP 2112.

Applicant (page 9) asserts that claim 18 is not drawn to bauxite waste streams but rather calcined hydrotalcite or hydrotalcite-like compositions. Norman et al teaches calcined bauxite waste streams which would have inherently been at least hydrotalcite-like as claimed.

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10. Applicant (page 9) further asserts the calcinations of bauxite waste streams after the addition of sodium carbonate or sodium hydroxide would not be expected to produce the instant compositions because normally magnesium would not be present and said compositions would further lack the one-to-one correspondence of elements necessary for anticipation. Applicant (page 9, second full paragraph et seq) teach bauxite waste streams as hydrotalcite or hydrotalcite-like source materials and the magnesium, calcium and/or iron may be present in said streams, which are preferably used in the unwashed state. Norman et al discloses calcining bauxite waste streams after addition of sodium carbonate or sodium hydroxide. Applicant's conclusions lack basis to rebut the facts of record.

11. Applicant's remaining arguments with respect to claims 5-6, 8-14, 16-17 and 23 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lange et al, US 6475,959, (cited in last Office action) discloses a mixed metal hydroxide and hectorite clay. Lange et al is not prior art for the instant application. Lange et al lacks the disclosure of materials prepared "wherein the calcination is carried out in the presence of greater than about 1,000 ppm of sodium".

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (703) 308-0451. The examiner can normally be reached on 9:00 AM to 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Daniel S. Metzmaier
Primary Examiner
Art Unit 1712

DSM